

Decision No. 9470.

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of the Operation and )  
Practices of Hugh A. Boyle, Hugh )  
Allen Boyle, and James J. Ryan, co- )  
partners, operating an express and )  
freight service between Sebastopol, )  
Santa Rosa, Cotati, Petaluma and )  
Oakland and Richmond, Berkeley and )  
Oakland in Contra Costa and Alameda )  
Counties. )  
. . . . . )

CASE No. 1583.

Hugh A. Boyle and Hugh Allen Boyle, Defendants.  
W. F. Geary and E. E. Maggard for Petaluma and  
Santa Rosa Railroad Company, Intervenor.  
S. S. Knight for Poultry Keeper's Association  
of Petaluma.

BY THE COMMISSION:

OPINION.

This is a proceeding instituted by the Commission on its own motion by reason of an Order To Show Cause issued on April 16, 1921, and an amended Order Instituting Investigation and Order To Show Cause issued on July 30, 1921, directing Hugh A. Boyle, Hugh Allen Boyle and James J. Ryan, co-partners, operating an express and freight service between Sebastopol and Oakland and intermediate points to appear and show cause why this Commission should not revoke, cancel or annul the certificate of public convenience and necessity for the operation of an automobile freight line between Sebastopol and Oakland and intermediate points or take such other action regarding alleged violation of the Commission's order as contained in Decision Number 8072 on Application Number 5778 as to the Commission appeared just and proper.

Public hearings were conducted by Examiner Handford at Petaluma on May 3 and August 16, 1921, the matter was duly submitted and is now ready for decision.

Hugh A. Boyle, Hugh Allen Boyle and James J. Ryan, co-partners, were granted a certificate of public convenience and necessity to operate automobile freight and express service as a common carrier between Sebastopol and Oakland, serving as intermediates the communities at Santa Rosa, Cotati, Petaluma and Novato and at Berkeley and Richmond, the authority being contained in Decision No. 8072 on Application No. 5778, as decided September 10, 1920. On September 18, 1920, Hugh A. Boyle and James J. Ryan filed with this Commission an acceptance of the certificate specifying that within thirty days from said September 18, 1920, the operation of said automobile truck line would commence and that tariffs and rules as required by General Order No. 51 of this Commission would be filed with the Railroad Commission. On October 20, 1920, Local Freight Tariff No. 1 (C. R. C. No. 1) was filed with the Railroad Commission naming rates for the transportation of merchandise between Sebastopol, Santa Rosa, Petaluma, San Rafael, Richmond, Oakland and intermediate points, said tariff being issued on October 19, 1920, and to become effective October 20, 1920. Time Schedule No. 1 to become effective October 20, 1920, was also filed with the Railroad Commission.

During the month of February, 1921, the Commission was advised that the service authorized by Decision No. 8072 on Application No. 5778 was not available for the public in that the schedule was not being observed by the co-partnership to whom the certificate had been granted and as such informal complaints became numerous, the Commission instituted a proceeding on its own motion and set the matter for hearing at Petaluma on May 3,

1921. At this hearing defendants, Hugh A. Boyle and Hugh Allen Boyle, requested a continuance on the ground that they had not been served with the Order To Show Cause and were therefore not represented by counsel and were unable to properly answer. The record of the Commission indicated that notices had been regularly sent by registered mail through the Postoffice, properly addressed to the last known address of these defendants, but defendants contended that such notices had not been delivered. The matter was therefore taken from the calendar and it later developed that the registered letters were not delivered to the defendants, Hugh A. Boyle and Hugh Allen Boyle, but were returned to the Commission by the postoffice authorities after efforts had been made, as indicated by postoffice marks, to effect delivery in Petaluma, Mill Valley, Berkeley and Oakland. An amended Order Instituting Investigation and Order To Show Cause was issued by the Commission on July 30, 1921, served on all defendants by registered mail directing them to appear at Petaluma on August 16, 1921, to which order defendants, Hugh A. Boyle and Hugh Allen Boyle, responded by appearance.

Mr. R. H. Bishop, Assistant Service Inspector for the Commission, testified that by direction of the Commission he had made two investigations of the operation in connection with complaints/<sup>made</sup> to the Commission, one inspection having been made in February and one in July, 1921. The inspection made in February (on February 15th) resulted in information that Jas. J. Ryan, one of the co-partners, had on or about January 1, 1921, abandoned the operation without advising H. A. Boyle. That Boyle upon learning that the operation was not being protected arranged for a truck and again commenced the operation. Some three weeks elapsed between the suspension of operation by J. J. Ryan and the resumption by H. A. Boyle. The investigation made by this

witness in July, 1921, consisted of an inquiry at the Oakland terminal on July 29th at which time it was found that the Oakland terminal had been changed from 319 Franklin Street to 422 Franklin Street. Inquiry at the new address resulted in information that no truck arrived at Oakland on July 28, 1921, and that the party in charge of the terminal had been informed by one of the Boyles by telephone from Petaluma that the trip would not be made as there was nothing to be brought down.

Witnesses for intervenor, Petaluma and Santa Rosa Railroad Company, testified that since January 15, 1921, the trucks formerly operated by the partnership had been stored in Petaluma, the 1920 license not having been renewed; that on July 14, 1921, a truck loaded with chicken coops containing live poultry left Petaluma and on the following morning deliveries were made to two different consignees in San Francisco; that a prospective shipper at Sebastopol was unable to secure service although making three attempts by telephoning to the office of the carrier in Petaluma. Hugh A. Boyle, one of the defendants, testified that there had been a disagreement with his partner, J. J. Ryan, and that as a result the trucks originally used in the operation of the route had been withdrawn. That on or about January 7, 1921, J. J. Ryan in the presence of witnesses had told witness that he was through with the line and that witness, Boyle, could have it, whereupon the service was resumed first by using a touring car and later by the use of three trucks. At the hearing an opportunity was given defendants to produce witnesses, residing in Petaluma, to testify as to the service having been continuously operated and as to its general character. Two witnesses were produced but both testified that the service was not available for a period during the month of January, 1921.

The granting of the certificate to this co-partnership on September 10, 1920, by Decision No. 8072 on Application No. 5778 followed several hearings at which the desired certificate was opposed and the controlling feature was the proposed establishment of a service from Sonoma County points to Richmond, Berkeley and Oakland, and the opening of a new traffic route for the transportation of farm, poultry and orchard products from Sonoma County to the East Bay communities.

The granting of the application conferred a privilege which could only be continued by the grantees fully meeting the obligations and responsibilities imposed by the statutory law and the rules and regulations of the Railroad Commission. These include the furnishing to the public of a regular and dependable service in accordance with the rates and time schedules filed with the Railroad Commission as well as compliance with the order of the Commission granting the certificate of public convenience and necessity.

The order in Application No. 5778 (Decision No. 8072) contained the following:

THE RAILROAD COMMISSION HEREBY  
DECLARES that public convenience  
and necessity requires the oper-  
ation by Hugh A. Boyle, Hugh Allen  
Boyle and James J. Ryan, co-  
partners, of an automobile truck  
line as a common carrier of freight  
and express between Sebastopol and  
Oakland, Berkeley and Richmond,  
serving as intermediates the com-  
munities at Santa Rosa, Cotati,  
Petaluma and Novato; provided,  
however, that this certificate  
conveys no authority for operation  
between Oakland and San Francisco;  
and provided, further, that the  
rights and privileges hereby auth-  
orized may not be transferred or  
assigned unless the written con-  
sent of the Railroad Commission to  
such transfer or assignment has  
first been secured.

IT IS HEREBY ORDERED that no vehicle may be operated under this certificate unless such vehicle is owned by the applicants herein or is leased by such applicants under a contract or agreement on a basis satisfactory to the Railroad Commission."

In the present proceeding evidence has been presented, and not controverted by defendants that operation has been conducted between Petaluma and San Francisco. This is a violation of the order granting the certificate if the route followed was that via Oakland and is a violation of the statutory law if the route was via Sausalito, no certificate of public convenience and necessity being held by defendants, an application therefor having been denied by Decision No. 8072 on Application No. 5578 as decided September 10, 1920.

The order granting the certificate contained a clause that the operative right therein granted should not be transferred or assigned unless the written consent of the Railroad Commission to such transfer or assignment had first been secured. This portion of the order was violated in that the evidence shows that in January, 1921, J. J. Ryan verbally transferred to Hugh A. Boyle his partnership interest in the operative route herein discussed. Also that Hugh Allen Boyle on July 12, 1920, transferred all his interest in the proposed line to Hugh A. Boyle.

The order also contained a clause that no vehicle should be operated under its provisions unless such vehicle was owned by the co-partnership or was leased by such co-partnership on a basis satisfactory to the Railroad Commission. The evidence in the present proceeding shows that the equipment now used in the operation of the line is owned by the "Boyle family" and there exists no lease or agreement in conformity with the

Commission's regulations as contained in Decision Number 5318 on Case Number 1202 as decided April 17, 1918.

In view of all the evidence in this proceeding we are of the opinion and find as a fact that the operation of the truck line as a common carrier of freight and express as authorized by this Commission's Decision Number 8072 on Application Number 5778 as decided September 10, 1920, has been conducted in violation of the provisions of the order and of the statutory law in that regular service has not been given in accordance with published schedules, that unauthorized transfers of the operative rights have been made, that operation to unauthorized terminals has been made, and that equipment has been operated which was not owned by the co-partnership or leased by such co-partnership in accordance with the conditions prescribed by this Commission in its order granting the certificate of public convenience and necessity.

#### O R D E R

Public hearings having been held in the above entitled proceeding, the matter having been duly submitted and the Commission being fully advised and basing its order on the finding of fact as set forth in the opinion preceding this order.

IT IS HEREBY ORDERED, That the certificate of public convenience and necessity heretofore granted by this Commission by its Decision Number 8072 on Application Number 5778, (decided September 10, 1920) granting to Hugh A. Boyle, Hugh Allen Boyle and Jas. J. Ryan, co-partners, the right to operate automobile truck service as a common carrier of freight service as a common carrier of freight and express between Sebastopol and Oakland and intermediate points, be and the same hereby is cancelled, and that no further operation by Hugh A. Boyle, Hugh Allen

Boyle and Jas. J. Ryan as co-partners or as individuals should  
be given over the route as hereinabove referred to.

Dated at San Francisco, California, this 25<sup>th</sup> day  
of August, 1921.

H. P. O'Connell

H. S. Loveland

James Martin

Chas. H. Ryan

J. J. Ryan

Commissioners.